

A-Engrossed
Senate Bill 546

Ordered by the Senate April 5
Including Senate Amendments dated April 5

Sponsored by Senator SOLLMAN, Representatives NERON, HUDSON, Senator PATTERSON; Senators CAMPOS, DEMBROW, GOLDEN, Representatives GRAYBER, NOSSE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Oregon Health Authority to adopt and maintain list of designated high priority chemicals of concern used in cosmetic products and to periodically review and revise list. Requires authority to post certain information on authority's website.

Requires manufacturers of cosmetic products sold in state to include on manufacturer's website notice of certain chemicals used in products, beginning on January 1, [2025] **2027**.

Bans manufacture, sale and distribution of cosmetic products containing certain chemicals and classes of chemicals in state, beginning on January 1, [2025] **2027**.

A BILL FOR AN ACT

1
2 Relating to chemicals used in cosmetic products.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 5 of this 2023 Act:**

5 (1) **"Chemical" means:**

6 (a) **A substance with a distinct molecular composition and the breakdown products of the**
7 **substance that form through decomposition, degradation or metabolism; or**

8 (b) **A group of structurally related substances and the breakdown products of the sub-**
9 **stances that form through decomposition, degradation or metabolism.**

10 (2) **"Class of chemicals" means a group of chemicals that are related or similar based on**
11 **their structure, use, physical property, radiological property or other factors.**

12 (3) **"Contaminant" means trace amounts of chemicals that are incidental to manufac-**
13 **turing and that serve no intended function in the product component, including but not**
14 **limited to:**

15 (a) **Unintended by-products of chemical reactions during the manufacture of the product**
16 **component;**

17 (b) **Trace impurities in feedstock;**

18 (c) **Incompletely reacted chemical mixtures; and**

19 (d) **Degradation products.**

20 (4)(a) **"Cosmetic product" means an article intended to be rubbed, poured, sprinkled or**
21 **sprayed on, introduced into or otherwise applied to the human body or any part thereof for**
22 **cleansing, beautifying, promoting attractiveness or altering the appearance, and any article**
23 **intended for use as a component of such an article.**

24 (b) **"Cosmetic product" includes cosmetics marketed to professionals.**

25 (c) **"Cosmetic product" does not include:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (A) Soap;
- 2 (B) Dietary supplements; or
- 3 (C) Food and drugs regulated by the United States Food and Drug Administration.
- 4 (5) “De minimis level” means:
- 5 (a) For a chemical that is an intentionally added chemical, the practical quantification
- 6 limit; or
- 7 (b) For a chemical that is a contaminant, a concentration of 100 parts per million.
- 8 (6) “Formaldehyde releasing agent” means a chemical that releases formaldehyde.
- 9 (7) “Intentionally added chemical” means a chemical in a product that serves an intended
- 10 function in the product component.
- 11 (8)(a) “Manufacturer” means any person that produces a cosmetic product or an
- 12 importer or domestic distributor of a cosmetic product.
- 13 (b) “Manufacturer” does not mean:
- 14 (A) A retailer that sells to consumers cosmetic products produced by a third party.
- 15 (B) A grocery wholesaler or grocery retailer that contracts with a third party to produce
- 16 cosmetic products on behalf of and under the brand of the grocery wholesaler or grocery
- 17 retailer.
- 18 (c) For the purposes of this subsection, “importer” means the owner of the product.
- 19 (9) “Ortho-phthalates” means esters of ortho-phthalic acid.
- 20 (10) “Perfluoroalkyl and polyfluoroalkyl substances” means a class of fluorinated organic
- 21 chemicals containing at least one fully fluorinated carbon atom.
- 22 (11) “Practical quantification limit” means the lowest concentration of a chemical that
- 23 can be reliably measured within specified limits of precision, accuracy, representativeness,
- 24 completeness and comparability during routine laboratory operating conditions.
- 25 **SECTION 2.** (1)(a) The Oregon Health Authority shall adopt by rule and maintain a list
- 26 of high priority chemicals of concern used in cosmetic products and practical quantification
- 27 limits for each of those chemicals.
- 28 (b) The authority may include a class of chemicals on the list. If the authority includes
- 29 a class of chemicals on the list, the authority may exclude from the list specific members
- 30 of the class of chemicals that do not share the same hazards as the other members of the
- 31 class of chemicals.
- 32 (2) In adopting by rule the practical quantification limits for chemicals or classes of
- 33 chemicals on the list, the authority shall consider guidance developed by the State of
- 34 Washington and other federal, state, international and nongovernmental organizations with
- 35 the applicable expertise.
- 36 (3) The authority shall post the list of high priority chemicals on its website. For each
- 37 high priority chemical or class of high priority chemicals on the list, the authority shall post
- 38 information regarding the known health impacts associated with exposure to the chemical
- 39 or class of chemicals.
- 40 (4) The authority shall review and revise the list of high priority chemicals every three
- 41 years. In completing the revisions under this subsection, the authority:
- 42 (a) Shall consider adding or removing a chemical or class of chemicals from the list of
- 43 high priority chemicals if the chemical or class of chemicals is added to or removed from a
- 44 list maintained by another state agency, another state or a federal agency that the authority
- 45 has identified by rule as a list intended to identify high priority chemicals; and

1 (b) May remove a chemical or class of chemicals from the list of high priority chemicals
2 if the authority determines that the chemical or class of chemicals is no longer being used
3 in cosmetic products.

4 (5) The authority shall update the list of high priority chemicals on its website within one
5 year after the date on which a chemical or class of chemicals is added to or removed from
6 the list.

7 **SECTION 3.** A manufacturer of a cosmetic product sold or offered for sale in this state
8 that contains a chemical included on the list adopted and maintained under section 2 of this
9 2023 Act in an amount at or above a de minimis level shall include a notice for Oregon con-
10 sumers on the manufacturer's website. The notice must contain:

11 (1) Information that satisfies all of the labeling requirements pursuant to the Federal
12 Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq. and the federal Fair Packaging and La-
13 beling Act, 15 U.S.C. 1451 et seq.; and

14 (2) A list of chemicals or classes of chemicals intentionally added to the product if the
15 chemicals or classes of chemicals are identified by the authority as:

16 (a) A chemical or class of chemicals on the list of high priority chemicals of concern used
17 in cosmetic products adopted and maintained under section 2 of this 2023 Act; or

18 (b) A chemical or class of chemicals identified by a state agency, another state, a federal
19 agency or an accredited research university, or by other information deemed authoritative
20 by the Oregon Health Authority on the basis of credible scientific evidence, as known to:

21 (A) Harm the normal development of a fetus or child or cause other developmental
22 toxicity;

23 (B) Cause cancer, genetic damage or reproductive harm;

24 (C) Disrupt the endocrine system;

25 (D) Damage the nervous system, immune system or organs or cause other systemic
26 toxicity;

27 (E) Be persistent, bioaccumulative and toxic; or

28 (F) Be very persistent and very bioaccumulative as determined by the authority by rule.

29 **SECTION 4.** (1) A manufacturer may not knowingly manufacture, sell, offer for sale,
30 distribute for sale or distribute for use in this state any cosmetic product that contains any
31 of the following intentionally added chemicals or classes of chemicals above the practical
32 quantification limit:

33 (a) Ortho-phthalates;

34 (b) Perfluoroalkyl and polyfluoroalkyl substances;

35 (c) Formaldehyde (CAS Registry Number 50-00-0) and formaldehyde releasing agents;

36 (d) Methylene glycol (CAS Registry Number 463-57-0);

37 (e) Mercury and mercury compounds (CAS Registry Number 7439-97-6);

38 (f) Triclosan (CAS Registry Number 3380-34-5);

39 (g) m-Phenylenediamine and its salts (CAS Registry Number 108-45-2); and

40 (h) o-Phenylenediamine and its salts (CAS Registry Number 95-54-5).

41 (2) A manufacturer may not knowingly manufacture, sell, offer for sale, distribute for
42 sale or distribute for use in this state any cosmetic product that contains lead or lead com-
43 pounds (CAS Registry Number 7439-92-1) at 10 parts per million or above, or as otherwise
44 determined by the Oregon Health Authority by rule.

45 (3) Notwithstanding section 1 (4)(c)(C) of this 2023 Act, the prohibition on chemicals un-

1 der this section applies to cosmetic products even if the product contains drug ingredients
2 regulated by the United States Food and Drug Administration.

3 **SECTION 5.** (1) The Oregon Health Authority may impose a civil penalty on a manufac-
4 turer of cosmetic products for a violation of any provision of section 3 or 4 of this 2023 Act.

5 (2) For purposes of assessing civil penalties under this section, a violation consists of a
6 single course of conduct with regard to an entire cosmetic product line that is sold or offered
7 for sale in this state.

8 (3) The authority shall adopt by rule a schedule of civil penalties for violations of sections
9 3 and 4 of this 2023 Act. A civil penalty may not exceed \$5,000 for the first violation. A civil
10 penalty may not exceed \$10,000 for the second and each subsequent violation.

11 (4) In imposing a penalty under this section, the authority shall consider the following
12 factors:

13 (a) The past history of the manufacturer incurring a penalty in taking all feasible steps
14 or following all feasible procedures necessary or appropriate to correct any violation.

15 (b) Any prior violations of statutes, rules, orders or permits pertaining to high priority
16 chemicals of concern used in cosmetic products or the chemicals or classes of chemicals
17 listed in section 4 of this 2023 Act.

18 (c) The gravity and magnitude of the violation.

19 (d) Whether the violation was a sole event, repeated or continuous.

20 (e) Whether the violation was a result of an unavoidable accident, negligence or an in-
21 tentional act.

22 (f) The violator's cooperativeness and efforts to correct the violation.

23 (g) The economic and financial conditions of the manufacturer incurring a penalty.

24 (5) If the authority has reason to believe that a cosmetic product that contains a high
25 priority chemical of concern used in cosmetic products is being sold or offered for sale in this
26 state in violation of section 3 of this 2023 Act, the authority may request that the manufac-
27 turer provide a statement of compliance on a form provided by the authority. The manufac-
28 turer must submit the statement of compliance within 10 days after receipt of a request.
29 To prove compliance with section 3 of this 2023 Act, the manufacturer must:

30 (a) Show that the cosmetic product does not contain the high priority chemical of con-
31 cern used in cosmetic products at or above a de minimis level; or

32 (b) Show that the manufacturer complied with the notice requirements of section 3 of
33 this 2023 Act.

34 (6) If the authority has reason to believe that a cosmetic product that contains a chem-
35 ical or class of chemicals listed in section 4 of this 2023 Act is being manufactured, sold, of-
36 fered for sale, distributed for sale or distributed for use in this state in violation of section
37 4 of this 2023 Act, the authority may request that the manufacturer provide a statement of
38 compliance on a form provided by the authority. The manufacturer must submit the state-
39 ment of compliance within 10 days after receipt of a request. To prove compliance with sec-
40 tion 4 of this 2023 Act, the manufacturer must show that the cosmetic product does not
41 contain the intentionally added chemicals or class of chemicals listed in section 4 of this 2023
42 Act above the practical quantification limit.

43 **SECTION 6.** (1) Sections 2 to 5 of this 2023 Act become operative on January 1, 2027.

44 (2) The Oregon Health Authority may take any action before the operative date specified
45 in subsection (1) of this section to enable the authority to exercise, on and after the opera-

1 **tive date specified in subsection (1) of this section, all of the duties, functions and powers**
2 **conferred on the authority by sections 2 to 5 of this 2023 Act.**

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